



## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

#### RIN 0563-AC81

[Docket ID FCIC-22-0009]

### Increasing Crop Insurance Flexibility for Sugar Beets

**AGENCY:** Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

**ACTION:** Final rule with request for comments.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends the Common Crop Insurance Regulations, Sugar Beet Crop Insurance Provisions. This rule will reinstate stage guarantees and make the stage removal option permanent to ensure all producers have maximum flexibility to obtain the crop insurance coverage they need for their operation. The changes will be effective for the 2023 and succeeding crop years for counties with a contract change date on or after November 30, 2022, and for the 2024 and succeeding crop years for counties with a contract change date prior to November 30, 2022.

**DATES:** *Effective date:* [Insert date of publication in the *FEDERAL REGISTER*].

*Comment date:* We will consider comments that we receive by the close of business [Insert date 60 days after publication in the *FEDERAL REGISTER*]. FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

**ADDRESSES:** We invite you to submit comments on this rule. You may submit comments by going through the Federal eRulemaking Portal as follows:

- *Federal eRulemaking Portal*: Go to <http://www.regulations.gov> and search for Docket ID FCIC-22-0009. Follow the instructions for submitting comments.

All comments will be posted without change and will be publicly available on [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Francie Tolle; telephone (816) 926-7829; or email [francie.tolle@usda.gov](mailto:francie.tolle@usda.gov). Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 or (844) 433-2774 (toll-free nationwide).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIPs) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Federal crop insurance policies typically consist of the Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Throughout this rule, the terms "Crop Provisions," "Special Provisions," and "policy" are used as defined in the Common Crop Insurance Policy (CCIP) Basic Provisions in 7 CFR 457.8.

Additional information and definitions related to Federal crop insurance policies are in 7 CFR 457.8.

FCIC amends the Common Crop Insurance Regulations by revising 7 CFR 457.109 Sugar Beet Crop Insurance Provisions to be effective for the 2023 and succeeding crop years for counties with a contract change date on or after November 30, 2022, and for the 2024 and succeeding crop years for counties with a contract change date prior to November 30, 2022.

The changes to 7 CFR 457.109 Sugar Beet Crop Insurance Provisions are to reintroduce stage guarantees and add a new section with a stage removal option.

Stage guarantees provide progressive yield production guarantees for the crop as production costs accumulate through the growing season. For sugar beets, the first stage provides a 60% production guarantee from the date of planting until the earlier of thinning or 90 days after planting in California, or until July 1 in all other States. The final stage provides a 100% production guarantee thereafter. During the first stage, producers would have incurred fewer input costs. A lower stage guarantee during that time is more reflective of their costs. By the time the crop reaches the final stage, the majority of the producer's costs would already have been incurred and the higher (100%) production guarantee is more reflective of their inputs. Because indemnity payments are lower for losses during the first stage, stage guarantees provide a lower-cost crop insurance option for producers. The lower premium costs are allowed in exchange for receiving a lower guarantee (60%) for losses that occur during the first stage of the crop's growth.

Following discussions with the American Sugar Beet Growers Association, FCIC removed stage guarantees from the Crop Provisions in the Common Crop Insurance Regulations; Sugar Beet Crop Insurance Provisions final rule, published in the Federal Register on September 10, 2018 (83 FR 45535). In response to public comments, FCIC

made additional changes in the Common Crop Insurance Regulations; Sugar Beet Crop Insurance Provisions final rule published in the Federal Register on November 29, 2019 (84 FR 65627). At that time, public comments favored the removal of stage guarantees from the policy. Prior to the 2018 final rule, there had been a Sugar Beet Stage Removal Option Pilot (SBSROP) endorsement to the Crop Provisions that allowed a producer to pay extra premium in exchange for removal of stage guarantees from their policy (and thereby receive the final stage guarantee for insurable losses incurred at any time during the growing season). At that time, FCIC determined a large majority of producers elected the SBSROP endorsement and sugar beet producers expressed interest in permanently removing stage guarantees from the policy. Since the removal of stage guarantees with the 2018 final rule, however, FCIC has heard complaints from a small number of producers that they can no longer afford to purchase the level of coverage they once benefitted from. The few producers who had not previously purchased the stage removal option have faced hardships from the higher cost of insurance.

In this rule, FCIC will reinstate stage guarantees and make the stage removal option permanent to ensure all producers have maximum flexibility to obtain the crop insurance coverage they need for their operation. The specific changes to the Crop Provisions to allow optional stage guarantees include:

FCIC is adding a definition for “production guarantee (per acre)” which specifies: (1) First stage production guarantee - The final stage production guarantee multiplied by 60 percent; and (2) Final stage production guarantee - The number of pounds of raw sugar determined by multiplying the approved yield per acre by the coverage level percentage you elect.

FCIC is specifying how production guarantees are computed for policies with stage guarantees in section 3. The production guarantees are progressive by stages and

increase at specified intervals to the final stage. The first stage has a guarantee of 60 percent (60%) of the final stage production guarantee. The first stage extends from planting until the earlier of thinning or 90 days after planting in California; and July 1 in all other States. The final stage has a guarantee of 100 percent (100%) of the final stage production guarantee. The final stage applies to all insured sugar beets that complete the first stage. Any acreage of sugar beets damaged in the first stage to the extent that growers in the area would not normally further care for the sugar beets will be deemed to have been destroyed, even though you may continue to care for it. The production guarantee for such acreage will not exceed the first stage production guarantee.

FCIC is specifying how annual premiums are computed for policies with stage guarantees in a new section 7. The new section 7 “Annual Premiums” matches the corresponding section 7 in the Basic Provisions. As a result of inserting a new section into the Crop Provisions, FCIC is redesignating subsequent sections of the Crop Provisions as sections 8 through 16. In lieu of the premium computation method contained in section 7 of the Basic Provisions, the annual premium amount is computed by multiplying the final stage production guarantee by the price election, the premium rate, the insured acreage, your share at the time of planting, and any applicable premium adjustment factors contained in the actuarial documents.

FCIC is clarifying that replanting payments determinations for policies with stage guarantees are based on whether the remaining stand will produce at least 90 percent of the final stage production guarantee, by adding “final stage” to describe which production guarantee is the basis of the determination in section 12.

FCIC is clarifying how to determine production to count in the settlement of a claim for a policy with stage guarantees in section 14(c). Only appraised production in excess of the difference between the first and final stage production guarantee for acreage

that does not qualify for the final stage guarantee will be counted, except that appraised production will be counted not less than the production guarantee:

1. That is abandoned;
2. Put to another use without our consent;
3. That is damaged solely by uninsured causes; or
4. For which the producer fails to provide acceptable production records that are acceptable to the AIP.

FCIC is adding a new section 17 “Stage Removal Option” to provide the option to remove stage guarantees. Under the stage removal option, the production guarantee (per acre) will be the final stage guarantee; any provisions referring to the first stage production guarantee are not applicable. The stage removal option is only available to policyholders with additional coverage. The option is not available with the Catastrophic Risk Protection Endorsement and an election of the Catastrophic Risk Protection Endorsement is considered a cancellation of the stage removal option. The option must be elected by the sales closing date for the first year it is in effect. Coverage under the option is continuously provided in subsequent years, unless cancelled by the policyholder by the cancellation date. All insurable acreage of sugar beets in the county will be included under the option unless any acreage is specifically excluded by the Special Provisions. The premium adjustment factor in the actuarial documents for the stage removal option will apply to the annual premium computation method specified in section 7.

In addition, this rule will make corrections to grammatical and spelling errors and will remove the erroneous and duplicative text from sections 6 and 14. In the redesignated section 6, the section title and provision (a)(3) from the redesignated section 7 were erroneously placed at the end of the introductory paragraph. In the redesignated

section 14, the text “(f) \* \* \*” erroneously appears between paragraphs (f)(1) and (2).

This rule corrects those errors.

### **Effective Date, Notice and Comment, and Exemptions**

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore falls within that exemption. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996.

For major rules, the Congressional Review Act requires a delay the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this final rule is effective on the date of publication in the Federal Register.

### **Executive Orders 12866 and 13563**

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866. Therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or Executive Order 13563.

### **Clarity of the Regulation**

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

### **Environmental Review**

In general, the environmental impacts of rules are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321-4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500-1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental



Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

#### **Executive Order 12988**

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

#### **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

RMA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under EO 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation, RMA will work with the USDA

Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified in this rule are not expressly mandated by Congress.

### **The Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### **Federal Assistance Program**

The title and number of the Assistance Listing,<sup>1</sup> to which this rule applies is No. 10.450 – Crop Insurance.

### **Paperwork Reduction Act of 1995**

The purpose of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), among other things, are to minimize the paperwork burden on individuals, and to require Federal agencies to request and receive approval from the Office of Management and Budget (OMB) prior to collecting information from ten or more persons. This rule does not change the information collection approved by OMB under control numbers 0563-0053.

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<sup>1</sup>See <https://sam.gov/content/assistance-listings>.

## **USDA Non-Discrimination Policy**

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 or (844) 433-2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: [OAC@usda.gov](mailto:OAC@usda.gov).

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## **List of Subjects in 7 CFR Part 457**

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

## **Final Rule**

For the reasons discussed above, FCIC amends 7 CFR part 457 as follows:

**PART 457 - COMMON CROP INSURANCE REGULATIONS**

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Amend § 457.109 as follows:

a. In the introductory text, remove the phrase “2019 and succeeding crop years in states with a November 30 contract change date and for the 2020” and add the phrase “2023 and succeeding crop years in states with a November 30 contract change date and for the 2024” in its place;

b. In section 1, add a definition for “Production guarantee (per acre)” in alphabetical order;

c. Revise sections 3 and 6;

d. Redesignate sections 7 through 15 as sections 8 through 16;

e. Add a new section 7;

f. In newly redesignated section 10, remove the words “actuarial documents” and add “Special Provisions” in their place;

g. In the newly redesignated section 12, in paragraph (a), remove the words “(90%) of the production guarantee” and add “(90%) of the final stage production guarantee” in their place;

h. In the newly redesignated section 14:

i. In paragraph (a)(2), remove the word “havested” and add “harvested” in its place;

ii. Redesignate paragraph (c)(1)(iv) as paragraph (c)(1)(v);

iii. Add a new paragraph (c)(1)(iv); and

iv. In paragraph (f) introductory text, remove the words “actuarial documents” and add “Special Provisions” in its place;

v. Remove “(f)\*\*\*” following paragraph (f)(1);

i. Add section 17.

The revisions and additions read as follows:

**§ 457.109 Sugar Beet Crop Insurance Provisions.**

\* \* \* \* \*

**1. Definitions**

\* \* \* \* \*

*Production guarantee (per acre):*

(1) First stage production guarantee - The final stage production guarantee multiplied by 60 percent.

(2) Final stage production guarantee - The number of pounds of raw sugar determined by multiplying the approved yield per acre by the coverage level percentage you elect.

\* \* \* \* \*

**3. Insurance Guarantees, Coverage Levels, and Prices**

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the sugar beets in the county insured under this policy.

(b) The production guarantees are progressive by stages and increase at specified intervals to the final stage. The stages are:

(1) First stage, with a guarantee of 60 percent (60%) of the final stage production guarantee, extends from planting until:

- (i) The earlier of thinning or 90 days after planting in California; and
- (ii) July 1 in all other States.

(2) Final stage, with a guarantee of 100 percent (100%) of the final stage production guarantee, applies to all insured sugar beets that complete the first stage.

(c) The production guarantee will be expressed in pounds of raw sugar.

(d) Any acreage of sugar beets damaged in the first stage to the extent that growers in the area would not normally further care for the sugar beets will be deemed to have been destroyed, even though you may continue to care for it. The production guarantee for such acreage will not exceed the first stage production guarantee.

\* \* \* \* \*

## 6. Report of Acreage

In addition to the requirements of section 6 of the Basic Provisions, you must provide a copy of all production agreements to us on or before the acreage reporting date.

## 7. Annual Premium

In lieu of the premium computation method contained in section 7 of the Basic Provisions, the annual premium amount is computed by multiplying the final stage production guarantee by the price election, the premium rate, the insured acreage, your share at the time of planting, and any applicable premium adjustment factors contained in the actuarial documents.

\* \* \* \* \*

14. \* \* \*

(c) \* \* \*

(1) \* \* \*

(iv) Only appraised production in excess of the difference between the first and final stage production guarantee for acreage that does not qualify for the final stage guarantee will be counted, except that all production from acreage subject to paragraphs (c)(1)(i) and (ii) of this section will be counted; and

\* \* \* \* \*

## 17. Stage Removal Option

(a) Applicability:

(1) You must have an additional coverage policy to elect this option.

(2) You must elect this option in writing on or before the sales closing date for the first year it is in effect.

(3) This election is continuous, in accordance with section 2 of the Basic Provisions, unless canceled by the cancellation date. Your election of the Catastrophic Risk Protection Endorsement for your sugar beets in any crop year will be deemed to be cancellation of this option by you.

(4) All insurable acreage of sugar beets in the county will be included under this option unless any acreage is specifically excluded by the Special Provisions.

(b) Insurance Guarantees:

(1) The production guarantee (per acre) will be the final stage guarantee.

(2) The terms and conditions contained in sections 3(b) and 3(d) do not apply under this option.

(c) Premium Adjustment Factor: The premium adjustment factor in the actuarial documents for the stage removal option will apply to the premium computation method in section 7.

(d) Settlement of Claim:

(1) The “respective production guarantee” referenced in section 14(b) will be the final stage guarantee.

(2) The terms and conditions of section 14(c)(1)(iv) do not apply under this option.

Marcia Bunger,  
Manager,  
Federal Crop Insurance Corporation.

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